

IN THE
Supreme Court of the United States

OCTOBER TERM, 1976

No. **75-1907**

SAMMY JOE CHAVEZ,

Petitioner,

—v.—

THE STATE OF TEXAS,

Respondent.

**PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF TEXAS**

MELVIN L. WULF

MARTIN GUGGENHEIM

American Civil Liberties

Union Foundation

22 East 40th Street

New York, New York 10016

CLIFFORD J. HARDWICK

309 North Grant

Odessa, Texas 79761

Of Counsel

INDEX

	Page
Opinions Below.....	1
Jurisdiction.....	2
Questions Presented.....	2
Statutory Provisions Involved.....	3
Statement of the Case.....	5
Reasons for Granting the Writ.....	7
A. Conflict Between States and Importance of Issue.....	8
B. Importance of Issue.....	11
C. Petitioner Was Treated As a Juvenile As a Matter of Discretion.....	11
D. There Can Be No Evidentiary Distinctions in Juvenile and Adult Court Which Cast Upon The Veracity of the Testimony.....	13
Conclusion.....	15

APPENDIX:

Opinion of the Supreme Court of Texas.....	1a
Opinion of the Court of Civil Appeals, El Paso, Texas.....	15a
Conclusions of Fact and Conclusions of Law of the County Court of Ector County Texas, Sitting as a Juvenile Court.....	20a

Table of Authorities

Cases:

In re Steven B, 30 A.D.2d 422, 293 N.Y.S.2d 946 (1st Dept. 1968).....	11
In re D.C., 120 Cal. Rptr. 276 (1975).....	11
In re R.C., 114 Cal. Rptr. 735 (1974).....	11
Griffin v. Illinois, 351 U.S. 12 (1956)...	13
Jackson v. State, 516 S.W.2d 167 (Tex. Crim. App. 1974).....	8
In re Arthur M., 34 A.D.2d 761, 310 N.Y.S.2d 399 (1st Dept. 1970).....	9
McKeiver v. Pennsylvania, 403 U.S. 528 (1971).....	15

In the Interest of E.P., 291 So. 2d 238 (Fla. App. 1974).....	10
In re Robert P., 40 A.D.2d 638, 336 N.Y.S.2d 212 (1st Dept. 1972).....	10
Smith v. State, 525 P.2d 1251 (Okla. Ct. Crim. App. 1974).....	10
T. L. T. v. State, 212 S.E.2d 650 (Ga. App. 1975).....	9
Thomas v. United States, 370 F.2d 620 (9th Cir. 1969).....	11
United States v. Augenblick, 393 U.S. 346 (1969).....	8
State in the Interest of Williams, 325 So.2d 854 (La. App. 1976).....	10
In re Winship, 397 U.S. 358 (1970).....	9, 11, 14, 15
Statutes:	
Alaska Stat. § 47.10.070 (1971).....	11
Tex. Code Crim. Proc. art. 38.14(1975)...	3, 6, 13
Tex. Fam. Code Ann. § 54.02 (1975)....	3, 5, 12
Miscellaneous Authorities:	
7 WIGMORE, EVIDENCE § 2056 (1940, Supp. (1976).....	7, 13

In the
Supreme Court of the United States

October Term, 1976

No. _____

Sammy Joe Chavez,

Petitioner,

-v.-

The State of Texas,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF TEXAS

Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of Texas affirming his adjudication of delinquency and commitment to the custody of the Texas Youth Council.

OPINIONS BELOW

The opinion of the Supreme Court of Texas is officially reported at 533 S.W.2d

476 (1976) and is set forth in the Appendix, infra, at pp. 1a-14a. The opinion of the Court of Civil Appeals is officially reported at 521 S.W.2d 286 (1975) and is set forth in the Appendix, infra, at pp. 15a-19a. The findings of fact and conclusions of law of the County Court sitting as a Juvenile Court are not officially reported and are set forth in the Appendix, infra, at pp. 20a-22a.

JURISDICTION

The decision of the Supreme Court of Texas was entered on January 28, 1976. The order of the Supreme Court of Texas denying a timely motion for rehearing was entered on March 3, 1976. By order dated May 20, 1976 Mr. Justice Powell extended the time for filing this petition to and including July 1, 1976. The jurisdiction of this Court is invoded pursuant to 28 U.S.C. § 1257(3).

QUESTIONS PRESENTED

1. WHETHER A JUVENILE MAY BE FOUND TO HAVE ENGAGED IN DELINQUENT CONDUCT AND COMMITTED FOR A TERM OF YEARS BASED SOLELY ON THE UNCORROBORATED TESTIMONY OF AN ACCOMPLICE WITNESS CONSISTENT WITH DUE PROCESS AND EQUAL PROTECTION OF THE LAW WHEN AN ADULT ACCUSED OF THE SAME CRIMINAL ACT IN THE SAME JURISDICTION COULD NOT BE

CONVICTED WITHOUT CORROBORATION OF AN ACCOMPLICE WITNESS.

2. WHETHER A JUVENILE WHO MAY BE PROSECUTED FOR THE SAME ALLEGED CRIMINAL ACT IN EITHER THE JUVENILE COURT OR THE ADULT CRIMINAL COURT WAS DENIED DUE PROCESS OR EQUAL PROTECTION OF THE LAW WHEN HE WAS ADJUDICATED A DELINQUENT IN THE JUVENILE COURT BASED ON EVIDENCE WHICH WOULD BE INSUFFICIENT AS A MATTER OF LAW TO SUSTAIN A CONVICTION IN THE CRIMINAL COURT.

STATUTORY PROVISIONS INVOLVED

TEX. CODE CRIM. PROC. ANN. art. 38.14 (1966):

A conviction cannot be had upon the testimony of an accomplice unless corroborated by other evidence tending to connect the defendnat with the offense committed; and the corroboration is not sufficient if it merely shows the commission of the offense.

TEXAS FAMILY CODE ANNOTATED § 54.02 (1975):

(a) The juvenile court may waive its exclusive original jurisdiction and transfer a child to the appropriate district court or criminal district court for criminal pro-

ceedings if:

(1) The child is alleged to have violated a penal law of the grade of felony;

(2) The child was 15 years of age or older at the time he is alleged to have committed the offense and no adjudication hearing has been conducted concerning that offense;

(3) After full investigation and hearing the juvenile court determines that the cause or the seriousness of the offense or the background of the child the welfare of the community requires criminal proceedings.

(b) In making the determination required by subsection (a) of this section, the court shall consider, among other matters:

(1) Whether the alleged offense was against person or property, with greater weight in favor of transfer given to offenses against the person;

(2) Whether the alleged offense was committed in an aggressive and premeditated manner;

(3) Whether there is evidence on which a grand jury may be expected to return an indictment;

(4) The sophistication and maturity of the child;

(5) The record and previous history of the child; and

(6) The prospects of adequate protection of the public and the likelihood of the rehabilitation of the child by use of procedures, services, and facilities currently available to the juvenile court.

STATEMENT OF THE CASE

On August 14, 1974 an armed robbery occurred at a restaurant in Odessa, Texas (R. 7).^{*} On August 15, 1974 Gene Sanchez was identified as one of the perpetrators. Subsequent to the accusation, petitioner Sammy Joe Chavez, was arrested and charged with committing the robbery with Sanchez. Petitioner denied the charges.

Petitioner was born on September 26, 1958 and was thus fifteen years old at the time of his arrest. Accordingly, he was subject to being transferred to the criminal court for trial as an adult. Tex. Family Code Ann. § 54.02 (1975). However, the

^{*}The Symbol "R" refers to the transcript of the record of trial.

juvenile court, in its discretion, chose to treat the petitioner as a juvenile and try him for delinquency.

On August 28, 1974 a trial was held in the County Court of Ector County sitting as a Juvenile Court. The only evidence presented which linked petitioner to the crime was the testimony of Sanchez.* Sanchez testified that he did, in fact, commit the robbery, that he used a gun in the commission of the robbery and that petitioner committed the robbery with him (R. 17, 18).

At the close of the State's case, petitioner urged the court to return a verdict of not guilty on the ground that no corroboration of Sanchez's testimony whatsoever was adduced and that, under Tex. Code Crim. Proc. Ann. art. 38.14 (1966) corroboration of an accomplice's testimony is required before a conviction of an adult accused may be sustained (R. 27, 28). The County Court found as a matter of fact and law that Sanchez was an accomplice witness (21a). The County Court also found as a matter of fact that there was no evidence which corroborated the

* The second witness did, in fact, testify at Petitioner's trial (R. 10). However, upon motion by the State, her testimony was stricken from the record because of a tainted identification (R. 26).

testimony of Sanchez other than that a crime was committed (21a). Finally, the County Court found as a matter of law that corroboration of accomplice testimony is not required in order to adjudicate a juvenile guilty of having engaged in criminal conduct (21a-22a). The court entered an adjudication after specifically finding the federal constitution did not require corroboration of accomplice testimony in juvenile court even though Texas does require it for adults (R. 33-34, 36-37).

On August 29, 1974, petitioner was committed to the care, custody and control of the Texas Youth Council until his eighteenth birthday (R. 34, 52). On March 19, 1975 his adjudication and commitment was unanimously affirmed by the Court of Civil Appeals (El Paso) in a written opinion (15a). On January 28, 1976 the Supreme Court of Texas affirmed in a divided opinion (6-3) (1a). Both appellate courts found that petitioner's constitutional rights were not violated.

REASONS FOR GRANTING THE WRIT

Approximately one-half of the jurisdictions in the United States have enacted legislation requiring the corroboration of accomplice testimony in order to sustain a conviction. 7 WIGMORE, EVIDENCE § 2056

(1940, Supp. 1976). However, under the Federal Rules of Criminal Procedure, corroboration is not necessary in federal criminal prosecutions. See also, United States v. Augenblick, 393 U.S. 348 (1969).

This case presents the simple, but important, question of whether it is constitutional to convict a juvenile, in a delinquency proceeding, of a felony based upon evidence which would be insufficient as a matter of law to sustain a conviction for the same crime in an adult criminal proceeding in the same jurisdiction. It is settled in Texas that a conviction of an adult cannot be had upon the testimony of an accomplice unless such testimony is corroborated by other evidence tending to connect the defendant with the Offense charged. E.g., Jackson v. State, 516 S.W.2d 167 (Tex. Crim. App. 1974). All of the parties in this case agree that, had petitioner been prosecuted as an adult below, an acquittal would have been required as a matter of law.

A. CONFLICT BETWEEN STATES AND IMPORTANCE OF ISSUE

A majority of the Supreme Court of Texas has held that petitioner's conviction offended neither due process nor equal protection of the law. This decision is in di-

rect conflict with a number of other state court decisions in cases in which the issue has been raised. Thus, in New York, an accused juvenile delinquent can be convicted only upon evidence which would be sufficient to convict an adult as a matter of constitutional law. The court interpreted In re Winship, 397 U.S. 358 (1970) to mean that full compliance with the due process requirement of establishing proof beyond a reasonable doubt necessitated the application in delinquency proceedings of a state criminal procedure statute requiring corroboration and went on to say:

The testimony of an accomplice does not become more reliable because the accused is a juvenile rather than an adult. In fact, the necessity for supporting evidence is even more essential in view of the nature of the juvenile proceedings. In re Arthur M., 34 A.D. 2d 761, 762, 310 N.Y.S. 2d 399, 400 (1st Dept. 1970).

The same result was reached last year in Georgia. There it was held that a juvenile delinquency trial must, as an adult proceeding must, "include the necessity of producing independent corroborative evidence to that of an accomplice for a finding of guilt when based upon the latter's testimony." T. L. T. v. State, 212 S.E.2d 650 (Ga. App. 1975).

The same result has been reached in Oklahoma as a matter of policy. Smith v. State, 525 P.2d 1251 (Okla. Ct. Crim. App. 1974). See also, State in Interest of Williams, 325 So. 2d 854 (La. App. 1976).

A common view of several states, based explicitly upon the United States Constitution, is that evidentiary standards in the different courts must be identical. Thus, in New York, the rule is that:

The United States Supreme Court has only recently reiterated the requirement "that fairness requires that no distinction be made between adults and juveniles in evidentiary matters. Ivan V. v. City of New York. (citation omitted.) In re Robert P., 40 A.D.2d 638, 639, 336 N.Y.S.2d 212, 213 (1st Dept. 1972).

In Florida the same point has been expressed:

. . . [I]t is now well established that in delinquency proceedings based upon a charge of violation of criminal law. . . , criminal due process standards apply at the adjudicatory stage of the proceedings the same as though the juvenile were standing trial in the criminal court in the alleged offense. In the Interest of E.P., 291 So. 2d 238 (Fla. App. 1974).

In direct contrast, and consistent with the Supreme Court of Texas in this case, the Supreme Court of California has upheld determinations of delinquency based solely on uncorroborated accomplice testimony. In re R.C., 114 Cal. Rptr. 735 (1974), In re D.L., 120 Cal. Rptr. 276 (1975).

B. IMPORTANCE OF ISSUE

Moreover, this case is important because of the effect a decision would have on the resolution of a number of related evidentiary issues which directly affect the administration of proceedings in juvenile courts. Thus, it remains unsettled whether corroboration of an unsworn witness' testimony is necessary to sustain an adjudication of a delinquent, see In re Steven B., 30 A.D. 2d 422, 293 N.Y.S.2d 946 (1st Dept. 1968); or whether the corroboration of a delinquent's confession is required, see Thomas v. United States, 370 F.2d 620 (9th Cir. 1967). But see Alaska Stat. §47.10.070 (1971). This case would settle ambiguities and subtle issues which have surfaced since Winship, supra, was handed down.

C. PETITIONER WAS TREATED AS A JUVENILE AS A MATTER OF DISCRETION.

This case raises important due process and equal protection issues which should be addressed by this Court. As a result of

Texas' statutory scheme, petitioner suffered a deprivation of liberty which otherwise could not have occurred, simply because the State decided to treat him as a juvenile (thereby making the obtaining of a conviction not merely easier but possible). Petitioner was 15 years old at the time he was arrested and accused of a felony. Accordingly, he was subject to transfer to the adult criminal court for prosecution. Tex. Family Code Ann. § 54.02 (1975). Had he been so transferred, Texas law "would have required an acquittal." (dissenting opinion below, 13a.)

Petitioner was subject to prosecution in either of two courts. Had another 15 year old, with a substantial criminal record, been accused of participating in the crime with petitioner, the matter would have had to be dismissed against him as a matter of law upon his transfer to criminal court. At the same time, petitioner, presumably because of his good record, was ordered to stand trial in the only court in which he could be convicted. It is patently irrational and a violation of the United States Constitution to permit such disparate results. Moreover, it is ironic that in such a case the transfer would have the precisely opposite result than intended. The person most deserving of loss of liberty would be free while the person with an otherwise unblemished record is deprived of his liberty.

D. THERE CAN BE NO EVIDENTIARY
DISTINCTIONS IN JUVENILE AND
ADULT COURT WHICH CAST UPON
THE VERACITY OF THE TESTIMONY.

Article 38.14 of the Texas Code of Criminal Procedure provides that, lacking corroboration of an accomplice witness, the State has failed to prove the accused's guilt beyond a reasonable doubt as a matter of law. The policy beyond the rule is that

The testimony of an accomplice is considered to be inherently untrustworthy, largely for the reason that he may testify against the defendant in the hope of obtaining clemency for himself. 7 WIGMORE, EVIDENCE § 2057 (1940, Supp. 1976).

While we do not contend that such a rule is constitutionally mandated (Brief for Petitioner in Supreme Court of Texas at 5; 3a), it is axiomatic that once a state chooses to afford a benefit, it must extend it even-handedly to all. E.g., Griffin v. Illinois, 351 U.S. 12 (1956). In this case, the accomplice witness testified that he had held the gun (R. 18) and issued the threats (R. 22, 25). After implicating petitioner, however, Sanchez was merely placed on probation (R. 23). Petitioner, on the other hand, was committed to an institution until his eighteenth birthday (R. 52).

The purpose of the corroboration rule is fully applicable in this situation and it is irrational and a violation of due process and equal protection for Texas to apply the rule differently in this case. The point here is not merely that the outcome would have necessarily been different had petitioner been tried as an adult, it is that the testimony of Sanchez is equally untrustworthy regardless of the court in which the testimony was proffered. As Mr. Justice Harlan put it in his concurring opinion in Winship:

When one assesses the consequences of an erroneous factual determination in a juvenile delinquency proceeding in which a youth is accused of a crime, I think it must be concluded that, while the consequences [of an erroneous factual determination] are not identical to those in a criminal case, the differences will not support a distinction in the standard of proof. In re Winship, 397 U.S. at 373, 374 (Harlan, J. concurring).

Winship mandates a reversal of Petitioner's adjudication. Here, as Mr. Justice Harlan put it in Winship, petitioner suffers "a complete loss of his personal liberty through a state-imposed confinement away from his home, family and friends." 397 U.S. at 374. This deprivation of liberty is based on evidence which the State of Texas does not consider sufficient to prove the commission of a crime beyond a reasonable doubt.

Finally, nothing behind the purpose of the separate proceedings justifies the difference in evidentiary standards. Requirement of corroboration testimony when appropriate imposes no excess burden on the functioning of the juvenile system. There will be no delays inherent in the proceedings which could justify different rules. C.f. McKeiver v. Pennsylvania, 403 U.S. 528 (1971). If the prosecution has a case, the State will present it or move to dismiss depending on the facts. Moreover, as with Winship, affording juveniles this evidentiary right will in no way impair the opportunity at a "dispositional hearing for a wide-ranging review of the child's social history and for his individualized treatment." In re Winship, *supra*, at 366. Extension of the protection will only reduce the possibility of an erroneous adjudication and loss of liberty.*

CONCLUSION

For the reasons set forth above, the writ of certiorari should be granted.

Respectfully submitted,

* Counsel wish to acknowledge the assistance of Patricia Mc Connell, second year student at New York University School of Law, in the preparation of this petition.

MELVIN L. WULF

MARTIN GUGGENHEIM

American Civil Liberties

Union Foundation

22 East 40th Street

New York, New York 10016

Attorneys for Petitioner.

CLIFFORD J. HARDWICK

309 North Grant

Odessa, Texas 79761

Of Counsel.

APPENDIX

1a

Opinion of the Supreme

Court of Texas

In the

SUPREME COURT OF TEXAS

Wednesday, January 28, 1976

No. B-5330

In the Matter of

S. J. C.

This is an appeal from a judgment entered by the Judge of the Ector County Court at Law, sitting as a Juvenile Court, which declared appellant, a male 15 years of age, a juvenile delinquent, and committed him to the custody of the Texas Youth Council, pursuant to Title 3, of the Texas Family Code. The petitioner's contention is that the holding that a juvenile may be adjudicated a juvenile delinquent solely on the uncorroborated testimony of an accomplice witness is contrary to the requirements of due process and equal protection. The court of civil appeals

did not agree with this contention and affirmed the judgment of the trial court. 521 S.W.2d 286.

On August 14, 1974, an armed robbery occurred at a restaurant in Odessa, Texas. An employee on duty at the time of the offense reviewed a police line-up and identified only the man who held the gun during the robbery. The accomplice witness, identified by the witness in the police line-up, testified at the hearing that he held the gun and that he and the petitioner here both participated in the armed robbery. The State on its own motion agreed to strike all of the witness' testimony concerning the in-court identification of the petitioner, leaving the record void of any evidence linking petitioner to the armed robbery other than the testimony of the accomplice witness. The trial court found that petitioner did engage in delinquent conduct and committed him to the custody of the Texas Youth Council.

The sole question presented is whether the petitioner, a juvenile, having been found to have engaged in delinquent conduct based solely on the uncorroborated testimony of an accomplice witness, was denied due process and equal protection guaranteed by the Fourteenth Amendment.

Under Article 38.14, Vernon's Ann. C.C.P., the testimony of an accomplice witness must be

corroborated. It is settled in Texas that a conviction of an adult cannot be had upon the testimony of an accomplice unless such testimony is corroborated by other evidence tending to connect the defendant with the offense charged. *Jackson v. State*, 516 S.W.2d 167 (Tex. Crim. App. 1974); *Colunga v. State*, 481 S.W.2d 866 (Tex. Crim. App. 1972).

Petitioner takes the position that Article 38.14, Vernon's Ann. C.C.P., should apply to an adjudication hearing under Title 3 of the Texas Family Code. It is not petitioner's contention that the rule requiring corroboration of accomplice testimony is fundamental in and of itself, but merely that as adults are given this safeguard in Texas it will be in violation of due process and equal protection for a juvenile to be deprived of this safeguard and be found to have engaged in delinquent conduct.

The U. S. Supreme Court has considered a series of cases which applied due process protection factors in the trial of juveniles. *Haley v. Ohio*, 332 U.S. 596, 68 S. Ct. 302 (1948), 92 L. Ed. 224, concerned the admissibility of a confession taken from a 15 year old boy on trial for murder. It was held that the due process clause barred the use of the confession. *Kent v. United States*, 383 U.S. 541, 86 S. Ct. 1045 (1966), 16 L.Ed.2d 84, concerned a 16 year old boy charged with housebreaking, robbery and rape. The court

held that procedural rights given an adult should not be denied children merely because juvenile proceedings are characterized as civil in nature. There the court considered requirements for a vested waiver of the exclusive jurisdiction of the Juvenile Court of the District of Columbia in order that a juvenile could be tried in the district court as an adult. The court held it was necessary that "basic requirements of due process and fairness," be satisfied in considering the validity of such waiver of jurisdiction.

In Re Gault, 387 U.S. 1, 87 S. Ct. 1428 (1967), 18 L. Ed.2d 527, concerned a 15 year old boy, already on probation, who was committed in Arizona as a juvenile delinquent upon a complaint of lewd remarks by telephone. After reviewing the cases cited above, the court observed: "[a]ccordingly, while these cases relate only to restricted aspects of the subject, they unmistakably indicate that, whatever may be their precise impact, neither the Fourteenth Amendment nor the Bill of Rights is for adults alone." 387 U.S. 13, 87 S. Ct. 1436, 18 L. Ed. 538. The court held due process in juvenile proceedings embraced adequate written notice; advice as to the right of counsel; confrontation and cross examination; and the privilege against self incrimination. In Re Winship, 397 U.S. 358, 90 S. Ct. 1068 (1970), 25 L. Ed.2d 386, concerned the single question whether proof beyond a reasonable doubt is among the "essentials of due process and fair treatment" re-

quired during the adjudicatory stage when a juvenile is charged with an act which would constitute a crime if committed by an adult. After reviewing the holdings of In Re Gault, the court concluded that fundamental fairness requires the state to prove delinquent conduct beyond a reasonable doubt. In McKeiver v. Pennsylvania, 403 U.S. 528, 91 S. Ct. 1976 (1971), 29 L. Ed.2d 647, the court considered the question whether the Due Process Clause of the Fourteenth Amendment assures the right to trial by jury in the adjudicative phase of a State Juvenile Court delinquency proceeding. The court again reviewed the series of cases dealing with the constitutional requirements guaranteed in juvenile proceedings. The court concluded that trial by jury in the court's adjudicative stage is not a constitutional requirement. The court reasoned that in our legal system the jury is not a necessary component of accurate fact finding. While recognizing that there is nothing to prevent juvenile judges, in a particular case, from using an advisory jury, the court noted that as of the time some 28 states and the District of Columbia deny by statute a juvenile a right to a jury trial. The same result is reached in five other states by judicial decision. In ten states, including Texas, the statute provides^{1/} for a jury trial under certain circumstances.

^{1/} Texas Family Code §5.03(c) .

From a review of the above cases -- Haley, Kent, Gault, Winship, and McKeiver -- it is clear that some of the constitutional requirements attendant upon State criminal trials also have application in State juvenile proceedings adjudicative in nature. Among those which we have pointed out are the right to appropriate notice, to counsel, to confrontation and cross-examination, the privilege against self incrimination, and the standard of proof beyond a reasonable doubt. However, the courts have not held that all rights constitutionally assured to an adult accused of a crime also are to be enforced or made available to juveniles in delinquency proceedings. In fact, the U.S. Supreme Court has specifically refrained from going that far. In Kent, 383 U.S. at 562, 86 S. Ct. 1057, 16 L. Ed.2d at 97; and In Re Gault, 387 U.S. at 30, 87 S. Ct. 1445, 18 L. Ed.2d at 548 we find the following language: "We do not mean by this to indicate that the hearing to be held must conform with all of the requirements of a criminal trial or even of the usual administrative hearing; but we do hold that the hearing must measure up to the essentials of due process and fair treatment." It is to be noted that Title 3 of the Texas Family Code has adhered to the holdings of Kent, Gault and Winship by providing for each of these constitutionally protected safeguards: (1) notice of charges, Family Code § 53.04 (d); (2) right to counsel, Family Code §51.10; (3) self incrimination, Family Code §54.03

(e); (4) confrontation and cross-examination, Family Code §54.03 (b); and (5) standard of proof beyond a reasonable doubt, Family Code §54.03(f).

The juvenile judge in the instant case found from the evidence beyond a reasonable doubt that this petitioner, a juvenile, did engage in delinquent conduct, namely, armed robbery. The court finding was based solely on the testimony of an accomplice, who testified that he and the petitioner participated in the armed robbery. Does the absence of corroborated testimony of the accomplice witness prevent the juvenile hearing from measuring up to the essentials of due process and fair treatment, where a like conviction of an adult would not be upheld? Only about one half of the states of the United States have enacted statutes similar to Art. 38.14 Vernon's Ann. C.C.P., requiring the testimony of an accomplice witness to be corroborated. VII Wigmore on Evidence, §2056. Federal rules of evidence do not embrace the requirement of corroboration of accomplice testimony to sustain a criminal conviction. In U.S. v. Augenblick, 393 U.S. 348, 89 S. Ct. 528 (1969), 21 L. Ed.2d 537, the Court of Claims granted relief in a back-pay suit filed by a serviceman because of a defect in the military court decision in which the serviceman was sentenced to reduction in rank, partial forfeiture of pay and confinement for six months. The Court of Claims

granted the relief because of the provision of the Manual for Courts-Martial which states that the court-martial "cannot" base a conviction "upon the uncorroborated testimony of a purported accomplice in any case, if such testimony is self-contradictory, uncertain, or improbable." The U.S. Supreme Court reversed the lower court and said: "[t]he paragraph regarding accomplice testimony is a statutory rule of evidence. Such rules do not customarily involve constitutional questions." The court continued: "Rules of evidence are designed in the interest of fair trials. But unfairness in result is no sure measure of unconstitutionality. When we look at the requirements of procedural due process, the use of accomplice testimony is not catalogued with constitutional restrictions." We therefore conclude that the adjudication of a juvenile delinquent solely upon the uncorroborated testimony of an accomplice is not in violation of due process and equal protection. The juvenile judge invoked the essentials of the due process and fair treatment, including the standard of proof beyond a reasonable doubt. If the admissible evidence establishes delinquent conduct beyond a reasonable doubt, the constitutional evidentiary requirement has been met. Uncorroborated accomplice testimony goes to the weight of the evidence to be considered by the trier of facts. Such testimony does not alter the standard of proof required by due process.

The judgments of the courts below are affirmed.

James G. Denton, J.

Dissenting Opinion

I respectfully dissent. It is clear that the record before us is devoid of any evidence linking the juvenile petitioner to the armed robbery aside from the sole testimony of the accomplice witness.

The majority has held that under appropriate United States Supreme Court guidelines, the juvenile judge in this controversy complied with the essentials of due process and fair treatment, including the application of the standard of proof of beyond a reasonable doubt. While I have no quarrel with their reading and interpretation of the applicable federal law up to a point, I do sincerely maintain that the majority's review falls short of a proper analysis of the real question confronting us.

It is not the contention of the petitioner that the rule requiring corroboration of accomplice testimony is fundamental in and of itself. He basically contends that as adults are granted this safeguard

in Texas, it would be a violation of due process and equal protection to deprive a juvenile of such a protective device and thereby be found to have violated a Texas penal law. The petitioner maintains that certain essential safeguards must be employed in a juvenile case if he is to be fairly treated.

Following the holdings of Kent, In re Gault, and In re Winship, Texas law relative to juvenile proceedings was required to be somewhat revamped. Title 3 of the TEXAS FAMILY CODE was drafted so as to follow the basic tenets set forth in the above decisions, thereby affording to juveniles in many respects substantially the same safeguards available to adults. The Texas Code of Criminal Procedure requires the testimony of an accomplice witness to be corroborated. TEX. CODE CRIM. PROC. ANN. art. 38.14 (1966). Thus, the Texas decisions have held that the uncorroborated testimony of an accomplice witness will not sustain an adult conviction since "an accomplice witness is a discredited witness because his testimony alone cannot furnish the basis for a conviction." TEX. CODE CRIM. PROC. ANN. art. 38.17; O'Neal v. State, 421 S.W.2d 391 (Tex. Crim. App. 1967); Cast v. State, 164 Tex. Crim. 3, 296 S.W.2d 269 (1956). The test of the sufficiency of the corroboration is to eliminate the evidence of the accomplice from consideration and then to examine the testimony of the other witnesses to determine if there is inculpatory evi-

dence. Colunga v. State, 481 S.W.2d 866 (Tex. Crim. App. 1972). In essence, the uncorroborated testimony of an accomplice witness, standing alone, cannot establish the guilt of an adult beyond a reasonable doubt. Standfield v. State, 84 Tex. Crim. 437, 208 S.W. 532 (1918). The United States Constitution has also been interpreted to require proof beyond a reasonable doubt in juvenile cases, and the pertinent Texas statute so provides. TEX. FAMILY CODE ANN. § 54.03(F) (1975); In re Winship, 397 U.S. 358 (1970). See, State v. Santana, 444 S.W.2d 614 (Tex. 1969), vacated and remanded, 397 U.S. 596 (1970). George v. State, 506 S.W.2d 275 (Tex. Civ. App. -- Houston [1st Dist.] 1974, no writ).

The reason behind holding that such accomplice testimony must be corroborated is obvious -- there is a high probability that such testimony may be untrustworthy. For instance, the accomplice may testify adversely to his cohort in an attempt to curry favor with the authorities. The problem of untrustworthiness exists whether it is an adult or a juvenile's rights that are at stake. It is patently obvious that the weight that should be ascribed to uncorroborated accomplice testimony should in no way depend upon the age of the "accused." Such a factor is clearly irrelevant and such a discriminatory distinction can serve no useful purpose. Thus, when analyzed from this perspective, it is clear that the need also exists for corroboration

of an accomplice's testimony in a juvenile adjudication hearing.

There can be no valid basis for such a discriminatory distinction between juveniles and adults when the ultimate outcome in either case may be actual physical confinement. See, Gault, supra. Such an arbitrary classification may not be justified in Texas on the grounds that the juvenile is a protected species under the law and that he is removed from the taint of criminality through the workings of a protective, rehabilitation-oriented system of justice. In a situation such as the one now before us, the protection of the child rationale clearly breaks down. The mere fact that a proceeding is labeled "civil" rather than "criminal" is no justification for denying basic rights to a juvenile that are afforded to adults. If anything, it is more logical under the protective concept of parens patriae that the legislature and courts should be more cautious with regard to the requirements that concept demands; especially prior to attaching to the juvenile the stigmas of being institutionalized and being declared a delinquent. Note, 27 Baylor L. Rev. 777 (1975). While the protection of the juvenile is often a valid rationale, it can have little application to the present case where the potential consequence to be faced by either juvenile or adult is the same -- a deprivation of liberty. Given this specific

factual pattern, no state interest justifies such discriminatory treatment.

The denial of equal protection is obvious and the consequences alarming. In this case the accomplice witness admitted committing a \$125 armed robbery; if instead an individual had been murdered, it is very likely that both these youths would have been certified for transfer for trial as an adult in the criminal court whereupon Art. 38.17 of the Texas Code of Criminal Procedure would have required an acquittal of our petitioner since the only evidence linking him to the crime was the uncorroborated testimony of an accomplice. See, TEX. FAMILY CODE ANN. § 54.02 (1975). As a further example, suppose that this robbery had instead involved three individuals -- two juveniles and one adult. Under the present facts, a juvenile accomplice would then testify against our juvenile petitioner and the adult, equally implicating them both. This uncorroborated accomplice testimony would be the only evidence linking either the juvenile or the adult to the crime. Under Texas law as it presently exists, it would be required that the the adult be released and yet, the juvenile would be subject to confinement. This is indeed a curious anomaly -- a juvenile is subject to confinement when an adult would be set free.

The denial of the juvenile petitioner's

constitutional right to equal protection is palpably evident. I fear that the holding of the majority in the present case has subjected this juvenile to the "worst of both worlds."^{1/} See, Kent v. United States, 383 U.S. 541 (1966). I would reverse the judgment of the court of civil appeals.

Sears McGee, J.

Steakley, J. and Pope, J. join in this dissent.

^{1/} I feel that the majority's reliance on United States v. Augenblick, 393 U.S. 348 (1969) is misplaced. It would seem that any lack of corroboration was evident only in the investigatory stage of the proceeding. More importantly, the facts are dissimilar and that decision analyzed procedural due process and not the equal protection question presently before us.

Opinion of the Court of Civil Appeals

In the

COURT OF CIVIL APPEALS

El Paso, Texas

Wednesday, March 19, 1975

No. 6429

In the Matter of

S. J. C.

Appellant was found by the Court, sitting without a jury, to be a juvenile delinquent and was committed to the care, custody and control of the Texas Youth Council. The verdict that he engaged in delinquent conduct is based entirely on the uncorroborated testimony of an accomplice, so the question presented is whether the Appellant can be found delinquent on the testimony of an accomplice in view of Tex. Code Crim. Proc. Ann. art. 38.14.

The case against Appellant arose out of an armed robbery of a business establishment in which \$125.00 cash was taken. The only evidence linking Appellant to the armed rob-

bery is that of the testimony of the accomplice witness, who was in fact found by the Court to be an accomplice witness. The trial Court also found as a fact that there was no evidence which corroborated the testimony of the accomplice witness, and the trial Court found as a matter of law that corroboration of the accomplice's testimony is not required in order to adjudicate a child guilty of having engaged in delinquent conduct. It is this matter of law that is the sole point of error in this case. We are of the opinion that the trial Court's order should be affirmed.

Article 38.14 of the Texas Code of Criminal Procedure provides that a conviction may not follow unless there is corroboration of accomplice testimony, and such corroborating evidence must link the accused to the crime. It is also well established by the case law of Texas that in a criminal proceeding where the testimony of an accomplice is uncorroborated by evidence connecting the defendant with the commission of the crime, then the defendant must be acquitted. *Colunga v. State*, 481 S.W.2d 866 (Tex. Crim. App. 1972); *Rainey v. State*, 401 S.W.2d 606 (Tex. Crim. App. 1966); *O'Neal v. State*, 421 S.W.2d 391 (Tex. Crim. App. 1967). Appellant strongly urges the unfairness, that solely because of an age differential, a juvenile may be found to have engaged in delinquent conduct based solely on the uncorrobo-

rated testimony of an accomplice witness. He cites the basis of the rule requiring corroboration as being that the testimony of an accomplice is considered to be inherently untrustworthy for the reason that he may testify against the defendant in the hope of obtaining clemency for himself. VII Wigmore on Evidence § 2057 (1940, Supp. 1972). Of this we have seen much in the so-called Watergate trials of recent times. Unfair it may be, but it is not violative of the essentials of due process and fair treatment required by the Constitution of this State or the United States. The Legislature of this State in its wisdom has seen fit to set up a statutory procedure to determine whether or not a juvenile is delinquent and if so to provide for his disposition. By other statutes it has prescribed a different procedure for adults in purely criminal trials. What Appellant is asking this Court to do is to let him have the benefits of the juvenile proceedings yet reach into the criminal proceedings and apply Article 38.14 thereof to his case. This we cannot do without changing what the Legislature has done and thus violate the principles of separation of powers. Title 3 of the Texas Family Code and the Texas Rules of Civil Procedure exclusively govern all juvenile delinquency proceedings in Texas. Title 3 of the Family Code provides:

"Escept when in conflict with

a provision of this title, the Texas Rules of Civil Procedure govern proceedings under this title. * * *." Tex. Family Code Ann. § 51.17.

This product of the Legislature became effective on September 1, 1973. It codified and incorporated the essential and fundamental procedural rights which are the basic requirements of due process and fairness enunciated by the landmark cases decided since the enactment of the prior juvenile code, Tex. Rev. Civ. Stat. art. 2338-1. In incorporating these essential and fundamental due process rights into the Texas juvenile law, the Legislature did not include a provision such as Article 38.14 of the Code of Criminal Procedure. As indicated, we as a Court do not have the power to place that statute of the Criminal Code within the juvenile section of the Family Code. We do not make this determination on the simple basis that the juvenile laws are "civil" and the Code of Criminal Procedure deals with "criminal" laws, but for the sole reason that the Legislature has enacted laws setting up these procedures and this Court is bound to follow those laws unless they are in conflict with a higher law -- that is, a constitutional right. This Court then is bound by the statutory enactments of the Legislature applicable to this case unless it can be said that the requirement of corroboration of accomplice testi-

mony is necessary to meet the basic requirements of due process of constitutional law. Such right is not enunciated in either the Texas or the United States Constitutions. Rather, as we have seen, it is statutory in Texas. Only about one-half of the States of the United States have enacted statutes similar to Article 38.14. VII Wigmore on Evidence § 2056. And as to the Federal law, it is held in *United States v. Augenblick*, 393 U.S. 348, 89 S. Ct. 328, 21 L. Ed.2d 537, 543 (1969), that a paragraph of the Manual for Courts-Martial similar to Article 38.14 is merely a rule of evidence, and the Supreme Court said:

" * * * When we look at the requirements of procedural due process, the use of accomplice testimony is not catalogued with constitutional restrictions."

We have been cited to no case, and our research has revealed none, which holds that Article 38.14 is fundamental to the due process requirement of proof beyond a reasonable doubt. We are of the opinion that corroboration of accomplice testimony is not a constitutionally guaranteed fundamental right before one can be found to have engaged in delinquent conduct.

The judgment of the trial Court is affirmed.
Stephen F. Preslar, Chief J.

Conclusions of Fact and
Conclusions of Law
of the County Court
of Ector County, Texas

In the

COUNTY COURT AT LAW

OF ECTOR COUNTY, TEXAS

Sitting as a Juvenile Court

Wednesday, August 28, 1974

No. 1322

In the Matter of
 ,
 SAMMY JOE CHAVEZ

Conclusions of Fact

The above numbered and entitled cause came on to be heard before the Court on the 28th day of August, 1974. As presiding Judge in the above styled and numbered cause, I file these my Conclusions of Fact:

1. I find as a fact that Eugene Sanchez was an accomplice of Sammy Joe Chavez when they committed the offense alleged in the petition.

2. I further find that Sammy Joe Chavez and Eugene Sanchez on or about the 14th day of August, 1974, in Odessa, Ector County, Texas, while in the course of committing theft of One hundred twenty-five dollars (\$125.00) from Jody Parra, with the intent to obtain and control the property did knowingly and intentionally place Mary Ellen Aranda in fear of imminent bodily injury and death.

3. I further find as a fact that there was no corroboration of the testimony of Eugene Sanchez other than that a crime was committed.

Conclusions of Law

The above styled and numbered cause came on to be heard before the Court on the 28th day of August, 1974, and as presiding Judge, I file these my Conclusions of Law:

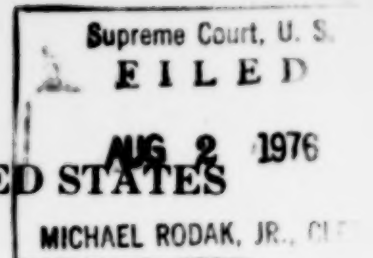
1. I find as a matter of law that Eugene Sanchez was an accomplice of Sammy Joe Chavez in committing the alleged offense.

2. I find as a matter of law that the provisions of the Texas Code of Criminal Procedure, Section 38.14 regarding the cor-

roboration of accomplice testimony does not reach to essential fairness and is therefore inapplicable in a juvenile proceeding.

Philip E. Godwin, J.

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1975



* * *

NO. 75-1907

* * *

SAMMY JOE CHAVEZ,

Petitioner

V.

THE STATE OF TEXAS,

Respondent

* * *

**RESPONSE IN OPPOSITION TO GRANTING
OF PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF TEXAS**

* * *

JOHN L. HILL
Attorney General of Texas

DAVID M. KENDALL
First Assistant Attorney General

LEE C. CLYBURN
Admin. Asst. Attorney General

THOMAS W. CHOATE
Special Asst. Attorney General

P. O. Box 12548, Capitol Station
Austin, Texas 78711

MIKE ATKINS
County Attorney, Ector County

Room 223, Ector
County Courthouse
Odessa, Texas 79761

Attorneys For Respondent

SUBJECT INDEX

	Page
OPINION BELOW	1
JURISDICTION	2
QUESTIONS PRESENTED	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	3
ARGUMENT AND AUTHORITIES	4
CONCLUSION	7
CERTIFICATE OF SERVICE	7

INDEX OF AUTHORITIES

Cases	Page
<i>Baker v. Carr</i> , 369 U.S. 186 (1962)	5
<i>Golden v. Zwickler</i> , 394 U.S. 103 (1969)	5
<i>Hopkins v. Wainwright</i> , 458 F.2d 393 (5th Cir. 1972)	6
<i>In re Gault</i> , 387 U.S. 1 (1967)	5
<i>In re Winship</i> , 397 U.S. 358 (1970)	5
<i>Local No. 8-6, Oil, Chemical and Atomic Workers Intern. Union, AFL-CIO v. Missouri</i> 361 U.S. 363 (1960)	4
<i>Matter of S.J.C.</i> 533 S.W.2d 746 (Tex. 1976)	1,3,5,6
<i>McKeiver v. Pennsylvania</i> , 403 U.S. 528 (1971)	6
<i>North Carolina v. Rice</i> , 404 U.S. 244 (1971)	5

INDEX OF AUTHORITIES, cont.

Cases	Page
<i>Preiser v. Newkirk</i> , 95 S.Ct. 2330 (1975)	5
<i>United States v. Augenblick</i> , 393 U.S. 348, 352 (1969)	6
<i>United States v. McSweeney</i> , 507 F.2d 298 (9th Cir. 1974)	6
<i>United States v. Stanley</i> , 433 F.2d 637 (5th Cir. 1970)	6
<i>Young v. Alabama</i> , 433 F.2d 854 (5th Cir. 1971)	6
Constitutional Provisions	
Fourteenth Amendment to the United States Constitution	2,5
Article III to the United States Constitution	2,4
Statutory Provisions	
Article 38.14, Texas Code of Criminal Procedure	2
Section 54.02, Texas Family Code	2,3
Title III, Texas Family Code	5
Title 28 U.S.C., Section 1257 (3)	2
Article 5143d, Texas Revised Civil Statutes Annotated	3,4

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

* * *

NO. 75-1907

* * *

SAMMY JOE CHAVEZ,

Petitioner

V.

THE STATE OF TEXAS,

Respondent

* * *

RESPONSE IN OPPOSITION TO GRANTING
OF PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF TEXAS

* * *

TO THE HONORABLE CHIEF JUSTICE AND
ASSOCIATE JUSTICES OF THE SUPREME
COURT OF THE UNITED STATES:

NOW COMES the State of Texas, Respondent herein,
and files this response in reply to Petitioner's Petition
for Writ of Certiorari heretofore filed herein.

OPINION BELOW

The opinion of the Supreme Court of Texas is reported
at 533 S.W.2d 746 (Tex. 1976) and is set forth in the
appendix to Petitioner's Petition for Writ of Certiorari.

JURISDICTION

The decision of the Supreme Court of Texas was entered on January 28, 1976. Motion for Rehearing was denied on March 3, 1976. This Court's jurisdiction is invoked under Title 28 U.S.C., Section 1257 (3). Accordingly, the jurisdictional requirements would appear to be satisfied, although Respondent refutes Petitioner's contention that any right guaranteed by the Constitution of the United States has been denied him.

QUESTIONS PRESENTED

1. WHETHER THE SUPREME COURT CAN RENDER ANY DECISION IN THE INSTANT LITIGATION IN THE ABSENCE OF AN ACTUAL DISPUTE OR CONTROVERSY.

2. WHETHER A JUVENILE, HAVING BEEN FOUND TO HAVE ENGAGED IN DELINQUENT CONDUCT BASED SOLELY ON THE UNCORROBORATED TESTIMONY OF AN ACCOMPLICE WITNESS, WAS DENIED DUE PROCESS AND EQUAL PROTECTION GUARANTEED BY THE FOURTEENTH AMENDMENT.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Of concern here are the Fourteenth Amendment to the Constitution of the United States and Article III to the Constitution of the United States.

State statutes involved herein appear at pages 3-5 of Petitioner's Petition for Writ of Certiorari and include Article 38.14, Texas Code of Criminal Procedure and Section 54.02, Texas Family Code; however, the

portions of Section 54.02, Texas Family Code, appearing in Petitioner's Petition for Writ of Certiorari are Section 54.02 §(a) and §(f) rather than Section 54.02, §(a) and §(b) as it appears therein. In addition, Article 5143d, Vernon's Annotated Texas Statutes, is applicable.

STATEMENT OF THE CASE

"On August 14, 1974, an armed robbery occurred at a restaurant in Odessa, Texas. An employee on duty at the time of the offense reviewed a police lineup and identified only the man who held the gun during the robbery. The accomplice witness, identified by the witness in the police lineup, testified at the hearing that he held the gun and that he and the petitioner had both participated in the armed robbery. The State on its own motion agreed to strike all of the witness' testimony concerning the in-court identification of the petitioner, leaving the record void of any evidence linking petitioner to the armed robbery other than the testimony of the accomplice witness. The trial found that petitioner did engage in the delinquent conduct..." *Matter of S.J.C.*, 533 S.W.2d 746 (Tex.1976).

Subsequent to the finding that Petitioner did engage in delinquent conduct, the trial court did, on August 29, 1974, commit Petitioner to the Texas Youth Council. Petitioner was admitted to the Texas Youth Council on September 11, 1974, where he remained until June 11, 1975. On June 16, 1975, Petitioner was placed on parole to the Ector County Juvenile Parole Office. Petitioner was finally released from parole and finally discharged on April 14, 1976.

AGRUMENT AND AUTHORITIES

1. WHETHER THE SUPREME COURT CAN RENDER ANY DECISION IN THE INSTANT LITIGATION IN THE ABSENCE OF ANY ACTUAL DISPUTE OR CONTROVERSY.

Petitioner's presumptions and theories notwithstanding, there is no live, ongoing controversy within the meaning of Article III, United States Constitution, upon which this Court can render an opinion. As of April 14, 1976, Petitioner was finally discharged from any supervision or control of the Texas Youth Council; and from that date, the State of Texas has had no authority, control or supervision over him since that date. Tex. Rev. Civ. Stat. Ann., Art. 5143d. In short, although Petitioner alludes to continuing jeopardy until his eighteenth birthday, the fact is that he is in no jeopardy now and cannot be in the future for the offense at issue in this litigation. The matter is moot.

The long-standing rule that the Supreme Court is not to render advisory opinions is most applicable here. No decision rendered by this Court in the instant litigation can have any future effect on Sammy Joe Chavez; and without some direct effect on the rights of Petitioner, the Supreme Court should recognize its duty to decide only actual controversies and not to render abstract, advisory opinion. *Local No. 8-6, Oil, Chemical and Atomic Workers Intern. Union, AFL-CIO v. Missouri*, 361 U.S. 363 (1960). The fact that Petitioner asserts the unconstitutionality of a state court's determination does not alter the need to closely follow these principles. A federal court cannot hold any state statute or decision void, because irreconcilable with the Constitution of the United States, except in a situation where it is called upon to decide the ongoing legal rights of litigants.

Baker v. Carr, 369 U.S. 186 (1962); *Preiser v. Newkirk*, 95 S.Ct 2330 (1975).

Finally, this Court is asked to decide this issue because of its effect on related evidentiary issues directly affecting the administration of proceedings in juvenile courts. (Petitioner's Petition for Writ of Certiorari, p. 11). Such rationale simply does not rise to the level of a concrete legal issue, presented in actual cases, not an abstraction or supposition, which is required for a decision to be rendered by this Court. *North Carolina v. Rice*, 404 U.S. 244 (1971); *Golden v. Swickler*, 394 U.S. 103 (1969).

II. WHETHER A JUVENILE, HAVING BEEN FOUND TO HAVE ENGAGED IN DELINQUENT CONDUCT BASED SOLELY ON THE UNCORROBORATED TESTIMONY OF AN ACCOMPLICE WITNESS, WAS DENIED DUE PROCESS AND EQUAL PROTECTION GUARANTEED BY THE FOURTEENTH AMENDMENT.

It is indisputable that some of the procedural safeguards guaranteed adult criminal defendants in state court proceedings by the Fourteenth Amendment to the United States Constitution are also guaranteed to juveniles in delinquency proceedings, and fundamental fairness is the measure to be used to decide applicability. *In re Gault*, 387 U.S. 1 (1967). As correctly stated below by the Texas Supreme Court, Title III, Texas Family Code, has adhered to this principle and specifically protected the fundamental rights set out in *Gault* and its progeny, *In re Winship*, 397 U.S. 358 (1970). *Matter of S.J.C.*, 533 S.W.2d 746, 748 (Tex. 1976). The question presented here is not one of fundamental fairness.

This Court has clearly indicated that the use of accomplice testimony is a matter evidentiary in nature and not of constitutional magnitude. *United States v. Augenblick*, 393 U.S. 348, 352 (1969). Relying upon this pronouncement, the Texas Supreme Court properly concluded that the use of uncorroborated evidence goes to the weight or sufficiency of the evidence to be considered by the trier of fact. *Matter of S.J. C., supra* at 749. Indeed, a host of federal criminal convictions make it clear that the use of accomplice testimony, per se, raises no problem in the area of fundamental fairness. *United States v. McSweeney*, 507 F.2d 298 (9th Cir. 1974); *United States v. Stanley*, 433 F.2d 637 (5th Cir. 1970). Thus, this Court should recognize that the requested review is a review of sufficiency of the evidence herein, and that does not present a proper federal question. *Hopkins v. Wainwright*, 458 F.2d 393 (5th Cir. 1972); *Young v. Alabama*, 443 F.2d 854 (5th Cir. 1971).

Similarly, the asserted unconstitutionality of the use of accomplice testimony as violative of equal protection guarantees is without merit. This Court has clearly recognized that the mere fact that some procedural safeguard is provided adults does not mandate that the same is wholly applicable to juveniles. *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971). Juvenile proceedings in Texas are not now and are not intended to be full-blown criminal trials, and the requested relief asserted by Petitioner would be one more step toward replacing the informal and rehabilitative aspects of juvenile court proceedings and "remak[ing] the juvenile proceeding into a full adversary process." *Id.* at 545. This Court has wisely avoided that result in the past and should avoid it here.

CONCLUSION

For the reasons stated above, Respondent asserts that there are no constitutional violations presented and the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

JOHN L. HILL
Attorney General of Texas

DAVID M. KENDALL
First Assistant Attorney General

LEE C. CLYBURN
Admin. Asst. Attorney General

THOMAS W. CHOATE
Special Asst. Attorney General

P. O. Box 12548, Capitol Station
Austin, Texas 78711

MIKE ATKINS
County Attorney, Ector County

Room 223, Ector
County Courthouse
Odessa, Texas 79761

Attorneys For Respondent

CERTIFICATE OF SERVICE

I, Lee C. Clyburn, Administrative Assistant Attorney General of Texas, Attorney for Respondent, do hereby certify that a copy of the above and foregoing Response in Opposition to Granting of Petition for Writ of Certiorari to the Supreme Court of Texas has been deposited in the United States mail by certified mail,

return receipt requested, on this the ____ day of July, 1976, to the following: Melvin L. Wulf and Martin Guggenheim, American Civil Liberties Union Foundation, 22 East 40th Street, New York, New York 10016; Clifford J. Hardwick, 309 North Grant, Odessa, Texas 79761.

Lee C. Clyburn
Administrative Assistant
Attorney General